

REMARKS

Claims 1-8 and 13-15 are currently pending in the application. The status of the claims based on this reply is as follows:

claims 1-3, 5-8, and 14-15 have been amended;

claims 4 and 13 have been canceled;

claims 16-20 have been added; and

claims 9-12 have been withdrawn.

The undersigned attorney wishes to thank Examiners McKinley and Stashick for the courtesy of the telephone interview on January 12, 2010. In the interview, the structure of the barrier foil in the application was discussed. The structure of the barrier foil was particularly discussed with respect to proposed, new independent claim 16. The new independent claim 16 set forth in this reply document incorporates the definition of the barrier foil suggested by the examiners. In that regard, claim 16 defines the barrier foil so as to include "an edge having a terminal side surface comprised of a portion of each of the first plastic side, second plastic side, and aluminum foil." This definition of the barrier foil has also been incorporated into the other independent claims pending in the application. In this regard, new independent claim 19 (which corresponds the proposed claim 17 discussed with the examiners) incorporates this definition. Independent claim 1 has also been amended so as to define the barrier foil in a manner that, while not identical to that in claim 16, is believed to substantially correspond to the definition of the barrier foil in claim 16.

Also discussed was the structure of the base flange relative to the barrier foil in independent claim 1 and proposed, new independent claims 16 and 17 (now 19). New independent claims 16 and 19 each incorporate the suggestions of the examiners as to the structural relationship of the base flange to the barrier foil.

In addition, the rejection of claim 1 under 35 U.S.C. §112, second paragraph, was discussed. Claim 1 has also been amended in a manner suggested by the examiners to overcome the rejection.

As set forth herein, amended claim 1 and new independent claims 16 and 19 are in accordance with the changes discussed with and proposed by the examiners to overcome the §103 and the §112 rejections.

Claims 1-3, 5, 6, 7, 8, and 13-14 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claim 1 has been amended so as to remove the “immediately prior to assembly in the fitment” phrase that apparently created the issue.

Claims 1-8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kawajiri et al. (U.S. Pat. No. 4,948,015) in view of Dobson (U.S. Pat. No. 3,260,411).

Independent Claim 1.

Independent claim 1 is directed to a fitment, i.e., a device that is adapted to engage the interior surface of a container and has a spout that at least partially extends through a hole that extends between the interior and exterior surface of the container. Independent claim 1 includes a base flange, a hollow spout, a removable part within a base of the spout, an overcap for resealably closing the spout, and a barrier foil. The barrier foil is comprised of an aluminium foil coated on both sides with a plastics layer. The barrier foil is further characterized by a terminal edge surface comprised of a portion of a first plastic layer associated with one side of the foil, a portion of a second plastic layer associated with the other side of the foil, and a portion the aluminium foil. The barrier foil is located within a receiving wall projecting from a surface of the base flange. Moreover, the barrier foil is welded to the base flange such that the receiving wall is sealed over the portion of the aluminium foil associated with the terminal edge surface in such a manner that the portion of the aluminium foil is covered by a portion of the base flange and sealed from the contents of the container with which the fitment is ultimately associated.

Kawajiri et al. (hereinafter “Kawajiri”) is directed to a carton with a liquid pouring-out device. The pouring out device 13 includes a thin film 21 comprised of a barrier layer 22 as an innermost layer. The film 21 can be a laminated structure comprising a first polyethylene layer, an aluminum layer as the barrier layer 22, and a second polyethylene layer. The peripheral edge

of the film is concealed by the material of the film 21 to prevent corrosion of the barrier layer by acids. As such, the thin film 21 is comprised of an aluminum barrier layer that is entirely surrounded by polyethylene. The film 21 is attached to the partition wall 15 by, for example, insert molding. The partition wall 15 has a downwardly turned edge that appears to primarily serve to position the film 21. See Fig. 4 and col. 4, lines 47-59. In any case, Kawajiri employs a film 21 whose aluminum barrier layer is prevented from coming into contact with the contents of the carton with which the device 13 is associated by totally encapsulating the aluminum barrier layer, including the peripheral edge of the aluminum barrier layer, in polyethylene. In contrast, claim 1 employs a barrier foil with an edge having a terminal side surface comprised of portions of an aluminum layer and plastic layers. The barrier foil is located within a receiving wall projecting from a first surface of a base flange. Moreover, the barrier foil is welded to the base flange such that the receiving wall is sealed over the portion of the aluminum foil associated with the terminal side surface of the barrier foil. The seal produced by the weld prevents contact between the aluminum foil associated with the terminal side surface of the barrier foil and the contents of a container with which the fitment is ultimately associated.

Dobson is cited in the Action for teaching the wrapping of an end (28) around an edge (20) to secure two planar members together. As such, Dobson appears to be directed to the last clause in claim 4 in which the “barrier foil is wrapped over the first surface of the flange.” Claim 4 has been canceled. A comparable clause is not present in independent claim 1. Nonetheless, Dobson does not remedy the deficiencies noted with respect to Kawajiri. Specifically, Dobson does not teach or suggest a barrier foil with an aluminum foil coated on both sides with a plastic layer and an edge having a terminal side surface that includes a portion of the aluminium foil, the location of such a barrier foil within a receiving wall projecting from a first surface of a base flange, and the barrier foil being welded to the base flange such that receiving wall is sealed over the portion of the aluminum foil associated with the terminal side surface of the barrier foil.

Based on the foregoing, it is respectfully asserted that independent claim 1 is in condition for allowance, and such allowance is earnestly solicited.

Independent Claim 4.

Independent claim 4 has been canceled. Consequently, as to claim 4, the rejection is no longer relevant.

Dependent Claims.

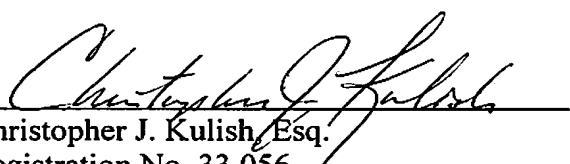
Each of claims 2, 3, and 5-8 is a dependent claim that depends either directly or indirectly from independent claim 1. Consequently, each of these dependent claims is at least allowable for the reasons noted with respect to independent claim 1. However, each of these dependent claims may be allowable for additional reasons, and the applicant reserves the right to assert any such reason in the future.

No claim related fees are believed to be due with this response. In the event any such fees are due, please debit Deposit Account 50-4902.

In the event that a petition for extension of time under 37 CFR §1.136(a) is required to have this reply considered and such a petition does not otherwise accompany this reply, please consider this a petition for an extension of time for the required number of months and authorization to debit Deposit Account 50-4902 for the required fee.

The application now appearing to be in form for allowance, reconsideration and allowance thereof is respectfully requested. If a telephone conversation will further the prosecution and/or expedite allowance, the examiner is invited to contact the undersigned attorney.

Respectfully submitted,

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